MOTION FILED

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IN THE

Supreme Court of the United States

OCTOBER TERM, 1975.

No. 75-302

LEN H. SMALL, ET AL., ETC.,

Appellants,

vs.

CHARLES PANGLE, KANKAKEE COUNTY TREASURER, ET AL., ETC.,

Appellees.

APPEAL FROM THE SUPREME COURT OF ILLINOIS.

MOTION AND BRIEF AMICUS CURIAE OF THE ILLINOIS ASSOCIATION OF HOMES FOR THE AGING, IN SUPPORT OF THE STATEMENT AS TO JURISDICTION FILED BY APPELLANTS.

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INDEX.

	PAGE
Motion	1
Nature of Applicant's Interest	1
Reasons for the Necessity of an Additional Brief	3
Conclusion	6
Brief Amicus Curiae	9
Argument	
I. The Illinois Supreme Court, in Three Cases in Addition to the Case at Bar, Has Created a Pattern of Discrimination Against Not-for-Profit Homes for the Aged	9
II. The Illinois Supreme Court Is Construing the Tax Exemption Provisions of the Illinois Statute Contrary to the Intent of the Legislature to Grant Tax Relief to the Elderly	13
III. For This Court to Properly Explore the Impact of the Case at Bar on the Problems of the Elderly Who Are Residents of Old Peoples Homes in Illinois, It Must Consider Certain Statistical and Sociological Information Regarding Problems of the Elderly, in General, and in the State of Illinois, and the Role of the Not-for-Profit Home for the Aged in Solving These Problems	16
Conclusion	19

Table of Authorities.

Cases.

Doran v. Cullerton (1972), 51 Ill. 2d 553, 283 N. E. 2d 865 ..... 4, 15

Methodist Old Peoples Home v. Korzen (1968), 39 Ill. 2d 149, 233 N. E. 2d 537 ..... 3, 9, 13

People v. YMCA (1936), 365 Ill. 118, 6 N. E. 2d 166 .. 10, 11

People ex rel. Nordlund v. Winnebago Home for the Aged (1968), 40 Ill. 2d 91, 237 N. E. 2d 533 ..... 3, 10, 13

People ex rel. Cannon v. S. Ill. Hospital (1949), 404 Ill. 58 10

Sisters of Third Order of St. Francis v. Board of Review (1907), 231 Ill. 317, 83 N. E. 272 ..... 10, 11

Wesley Willows v. Munson (1969), 43 Ill. 2d 203, 251 N. E. 2d 249 ..... 3, 10, 13, 14

Statutes.

Illinois Rev. Statutes (1973), Chap. 120, Sec. 500.23-1 .. 13

Illinois Rev. Statutes (1973), Chap. 111½, Sec. 35.19, 35.26 ..... 11, 12

Illinois Rev. Statutes (1973), Chap. 111½, Sec. 31.16 .. 12

Other Authorities.

The White House Conference on International Cooperation, Report of the Committee on Social Welfare, No. 28-Dec. 1, 1965 16

Older Americans U. S. Dept. of H. E. W., Office of Human Development, Administration on Aging, June, 1973 .. 16, 18

National Geriatrics Society, Views and News, 1973 17

The Older Population: Some Facts We Should Know, 1970, Administration on Aging 17

Developments in Aging: A Report of the Special Committee on Aging, U. S. Senate, 1974 17

Developments in Aging: A Report of the Special Committee on Aging, U. S. Senate, 1967 18

U. S. Housing & Home Finance Agency, Proceedings of the Interfaith Conference on Housing for Senior Citizens, 1964 18

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MOTION.

Now comes the Illinois Association of Homes for the Aging, the Applicant, by Robert Marks, its attorney, and respectfully moves this Court pursuant to Rule 42 of this Court for leave to file a brief *amicus curiae* in support of the Statement as to jurisdiction filed by Appellants. The Appellees have refused to consent to the filing of such brief. The Appellants will file their consent to file such brief.

I. Nature of the Applicant's Interest.

The Statement as to jurisdiction filed by the Appellants, raised the following questions.

A. Whether the above constitutional and statutory provisions, as interpreted by the Supreme Court of Illinois, impose

more stringent requirements for tax exemption upon old people's homes than upon other facilities within the defined class of institutions using their property for exempt purposes without any reasonable basis for such disparity in treatment, and thereby denies Appellants the Equal Protection of the Law under the Fourteenth Amendment.

B. Whether the granting of tax exemption to health care facilities similar in type and operation to Appellants' home but financed under the Illinois Health Facilities Authority Act denies Appellants the Equal Protection of the Law based upon the arbitrary classification of method of financing.

If this Court refuses to note probable jurisdiction and the decision of the Illinois Supreme Court in the *Pangle* case is allowed to stand, it is feared by the members of the Applicant, the Illinois Association of Homes for the Aging, that the local taxing authorities may attempt to tax all homes for the aged in Illinois, notwithstanding their true charitable status; and while each of the homes would have to be judged on the basis of its own facts, they all may be put to great expense in establishing their right to tax exemption.

The Illinois Association of Homes for the Aging is an Illinois not-for-profit corporation. It has as members 93 Illinois not-for-profit homes for the aged. The average age of the residents of the member homes is 85 plus years. There is a total of 132 licensed not-for-profit homes for aged in Illinois which care for slightly more than 14,000 old people in their institutions. Of the licensed old peoples' homes in Illinois, about 70% have religious sponsorship, about 20% have fraternal or ethnic group sponsorship and the balance are privately endowed homes and miscellaneous sponsorship. Of the religiously sponsored old peoples' homes about 50 are Protestant sponsored; about 40 are Catholic sponsored and 6 are Jewish sponsored. About one-half of all non-profit old peoples' homes in Illinois are in Cook County.

The method of financing these homes varies. In some old peoples' homes, those who are unable to pay are supported by a variety of public payment mechanisms. Those who are able to pay are charged according to their ability to pay. The most common method of financing the services rendered by the homes to their residents is from funds received from third party payers, such as Medicaid, Social Security and State supplements. The next most common method is in the form of monthly charges to the residents themselves.

At the present time, the property of most of the homes is exempt from taxes. The facilities fix their rates at no more than the actual cost of care provided and in many cases actually accept far less than the cost and the deficit is made up through charitable contributions.

The matter of property tax exemption is of the utmost importance to the members of the Illinois Association of Homes for the Aging which are having a difficult time in meeting the rising cost of operating their institutions. The Association desires, through the *amicus curiae* brief, to point out to this Court the overall situation in Illinois in regard to homes for the aged.

II. Reasons for the Necessity of an Additional Brief.

A. The Statement as to jurisdiction, filed on behalf of the Appellants, presents the issue of discrimination by the Illinois Supreme Court in the application of the tax exemption provisions of the Constitution and Illinois Statutes from the point of view of the one not-for-profit old peoples home involved in the instant case, but it does not set forth in the full pattern of such discrimination by the Illinois Supreme Court against not-for-profit old peoples homes in Illinois as shown in three other cases, to wit: *Methodist Old Peoples Home* v. *Korzen* (1968), 39 Ill. 2d 149; *People ex rel. Nordlund* v. *Winnebago Home for the Aged* (1968), 40 Ill. 2d 91; and *Wesley Williams* v. *Munson* (1969), 43 Ill. 2d 203.

For this court to properly determine the question as to whether it should note probable jurisdiction, the full pattern of discrimination against not-for-profit homes by the Illinois Supreme Court, as illustrated by these cases, and the impact of said discrimination on the tax situation with respect to not-for-profit old peoples homes in the State of Illinois must be brought before this Court. The applicant is in the best position to present a discussion of the cases as they apply to the entire pattern of discrimination with regard to not-for-profit homes in the State of Illinois.

B. The Statement as to jurisdiction, filed by the Appellants, fails to present the argument that the Illinois Supreme Court is construing the Illinois tax exemption statute contrary to the intent of the Illinois legislature, to grant tax relief to the elderly. This intent is expressed in Chapter 120, Section 500.23-1 of the Illinois Revised Statutes. Said Statute grants a homestead exemption of up to $1,500.00 in value of real estate owned by a person over 65 years of age which is used as a residence. Said Statute also provides that in the case of a cooperative apartment building there shall be an exemption of $1,500.00 in value of the real estate multiplied by the number of apartments occupied by persons over 65 who are owners of the cooperative. Thus, the Illinois legislature has granted a tax exemption to residences owned by elderly persons, and to cooperative apartment buildings to the extent that they have resident owners, but the Illinois Supreme Court is denying tax exemption to a not-for-profit old peoples home in the instant case, which was built through charitable gifts and funds partially obtained from commercial lenders, and which under its by-laws is open to elderly poor persons or those of limited means.

The Illinois Supreme Court, in *Doran* v. *Cullerton* (1972), 51 Ill. 2d 553, 283 N. E. 2d 865, has declared the said homestead exemption statute for people over 65 to be constitutional for assessments made in 1972 and subsequent years, because it said that the new Illinois Constitution of 1970, which became

effective June 30, 1971, allows such exemptions. The said Court denied the said homestead exemption for assessments made for years prior to 1972 because it said they were not valid under the old Illinois Constitution of 1870. Yet in the instant case, the Illinois Supreme Court, in construing the language of the tax exemption Article of the new Illinois Constitution of 1970 said, at page 514 of 60 Ill. 2d 510:

> "The above is clearly nothing more than a rephrasing of a similar provision of Section 3 of Article IX of the Illinois Constitution of 1970. Those cases interpreting the permissive legislature exemptions under the Constitution of 1870 are equally relevant in the limits of exemption now constitutionally permitted."

The failure of the Illinois Supreme Court to consider the intent of the legislature to grant tax relief to the elderly, as expressed by the Illinois legislature in the Homestead exemption Statute, and to consider the language of the tax exemption articles of the Illinois Constitution of 1970 when it denied tax exemption to the old peoples home in the instant case, is further evidence of the general pattern of inequity which the Illinois Supreme Court is following when it is confronted with the question of granting tax exemption to the property of old peoples homes in Illinois. Yet the Appellants, in their statement as to jurisdiction, have not seen fit to present this argument.

C. The Statement as to jurisdiction, filed by the Appellants, fails to furnish statistical and sociological information as to:

(1) The increasing growth of the population over 65 years of age, nationally and in the State of Illinois;

(2) The unique problems which people encounter solely because of old age; and

(3) The vital role of the not-for-profit home in dealing with the problems of the aged.

In order for this Court to properly explore the impact of the decision of the Illinois Supreme Court in the instant case on the problems of the elderly who are residents of not-for-profit old peoples homes throughout the State of Illinois, it should allow the Applicant to furnish information with regard to these matters in a brief *amicus curiae*.

If this information could be furnished, it would reveal to this Court that rather than applying a restrictive construction to the words "Charitable Purposes," which appears in the tax exemption provisions of the Illinois Statute and Constitution, as they apply to not-for-profit homes, the Illinois Supreme Court should be applying a liberal construction to said words.

III. Conclusion.

In any event, it is respectfully submitted that the point of view of the Applicant should be before this Court prior to the time that it determines the question as to whether it should note probable jurisdiction in the instant case. The member homes of the Applicant Association are already having a difficult time in meeting the rising costs of operating their facilities. Before additional burdens of expense may be placed upon such homes, in defending their positions as to their tax exemptions, they should be given a hearing in the instant case. Such a hearing could be obtained by this Court's permission to file a brief *amicus curiae*.

The Applicant respectfully prays that it be permitted to file a brief *amicus curiae* in support of the statement of jurisdiction

filed by Appellant to set forth viewpoints and arguments in the case at hand which may otherwise not be presented by the parties.

Respectfully submitted,

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BRIEF AMICUS CURIAE OF THE ILLINOIS ASSOCIATION OF HOMES FOR THE AGING, IN SUPPORT OF THE STATEMENT AS TO JURISDICTION FILED BY APPELLANTS.

ARGUMENT.

I.

THE ILLINOIS SUPREME COURT, IN THREE CASES IN ADDITION TO THE CASE AT BAR, HAS CREATED A PATTERN OF DISCRIMINATION AGAINST NOT-FOR-PROFIT OLD PEOPLES HOMES WITH REGARD TO THE APPLICATION OF THE TAX EXEMPTION PROVISIONS OF THE ILLINOIS CONSTITUTION AND STATUTES.

A) In the case of *Methodist Old Peoples Home* v. *Korzen* (1968), 39 Ill. 2d 149, 233 N. E. 2d 537, the Supreme Court of Illinois denied the tax exemption to an old peoples home operated by a not-for-profit corporation, on the grounds that

it made charges to residents based upon the location and size of the room. But in *People* v. *Y. M. C. A.* (1936), 365 Ill. 118, 6 N. E. 2d 166, and in *Sisters of Third Order of St. Francis* v. *Board of Review* (1907), 231 Ill. 317, 83 N. E. 272, it granted tax exemptions to a YMCA hotel and to a hospital, both of which charged for their accommodations in accordance with location and desirability.

B) In *People ex rel. Nordlund* v. *Winnebago Home for the Aged* (1968), 237 N. E. 2d 533, the Supreme Court of Illinois denied tax exemption to a not-for-profit old peoples home on the grounds that the home's property was not used exclusively for charitable purposes, even though 68% of the assets of the home were derived from charitable gifts and only 32% was derived from contributions from residents, and even though the land for the home was provided by gifts and the construction costs were provided by funds of the Association. Yet, in *People ex rel. Cannon* v. *S. Ill. Hospital* (1949), 404 Ill. 58, the Illinois Supreme Court granted tax exemption to a hospital formed by four doctors with no evidence of any outside charitable contributions or support.

C) In the case of *Wesley Willows* v. *Munson* (1969), 43 Ill. 2d 203, 251 N. E. 2d 249, the Supreme Court of Illinois had before it the question of whether to grant tax exemption to an old peoples home which was operated by a not-for-profit corporation which had no capital stock or stockholders, and whose only membership certificate was held by the Rock River Annual Conference of the Methodist Church. The affairs of this home were handled by a board of trustees, 36 in number, all of whom served without pay, and all of whom were elected and confirmed by the said Rock River Conference. The land for the home had been donated by charitable gift, and, prior to construction, over one-half million dollars in charitable gifts, including the land, had been received from foundations, individuals, church conferences and churches. At the time of trial, approximately twelve and one-half percent of residents received financial subsidies, either in whole or in part, and the said Rock River Conference of the Methodist Church provided funds for those financially in need. At the time of trial, the said church was contributing $23,500 per year for this purpose and all the income from the endowment fund of the home was used for helping residents in need. In addition, the home had organized an auxiliary for the purpose of raising funds for this purpose, yet the Illinois Supreme Court denied tax exemption to this home. The court said, at Page 251 of 251 N. E. 2d, that the tax exemption statute had to be strictly construed. It denied the exemption to *Wesley Willows* because, it said, the home was making charges based upon the location and desirability of the rooms. Yet, in the *YMCA* case, *supra,* the Illinois Supreme Court gave a liberal construction to the tax exemption statute and granted exemption to a hotel, and in *Sisters of Third Order of St. Francis* case, *supra,* the Court gave a liberal construction to the tax exemption statute and granted exemption to a hospital, both of whom made charges based upon the location and desirability of the accommodation.

In the case at bar, the Illinois Supreme Court similarly is denying tax exemption to a not-for-profit old peoples home on the grounds that it is making charges based upon the size and location of rooms.

D) In all three of the above cases, the Illinois Supreme Court, in denying exemption to the respective homes for the aged, made much of the fact that the applicants to said homes had to furnish information as to the status of their health and that said homes did not admit all applicants regardless of health. But the Illinois statutes require that a home for the aged must be licensed by the Illinois Department of Health (*Illinois Rev. Statutes* [1973] Chap. 111½, § 35.17) and also require that Illinois Department of Health shall prescribe minimum standards for nursing homes, sheltered care homes, and homes for the aged. (*Illinois Rev. Statutes,* Chap. 111½, § 35.19 and

35.26). Chapter 111½, § 35.16, Illinois Revised Statutes, defines a home for the aged as follows:

> " 'Home for the aged' means any home operated not for profit under the auspices of a religious, fraternal, charitable or other non-profit organization, or by a county pursuant to 'An Act in relation to homes for the aged', approved July 21, 1959, as heretofore or hereafter amended, or operated not for profit under an endowment, which through its ownership or management, and as its principal objective, provides maintenance, personal care, nursing or sheltered care to aged persons, and in the conduct of which provides such services to three or more persons over 60 years of age."

In other words, an old peoples home can be licensed as a sheltered care home, or as a nursing care, or both. The regulations of the Illinois Department, which were in the record in the *Wesley Willows* case, set forth that where the home for the aged has a license for sheltered care only, it shall not admit or keep any resident requiring nursing care, except for a mild illness which does not require skilled nursing care. The regulations further provided that a sheltered care institution could not admit or keep persons suffering from tuberculosis or infectious communicable diseases, or who had symptoms of serious mental or emotional disease. In the *Wesley Willows* case, it was pointed out to the court that the home was primarily a sheltered care facility, although it had a licensed small infirmary or health center for those in need of skilled nursing care. Yet, the court in *Wesley Willows* denied exemption because it said the home had "stringent health requirements" and because it said, at Page 251 of 251 N. E. 2d:

> "If health services beyond the scope of facilities and the personnel of Wesley Willows Health Center are needed, the member is transferred to an outside hospital or other institution. Should the member in the judgment of the staff physician and the administrator become mentally ill so as to jeopardize his own health and safety or the health and safety of others, the plaintiff may transfer the

> member to the type of facility equipped to care for his needs."

In making its decision, the Illinois Supreme Court in *Wesley Willows* completely ignored the Illinois statute and the regulations of the Illinois Department of Public Health, which set the standards under which Wesley Willows was governed, and, the court denied exemption because it said the home had "stringent health requirements." The health requirements which the home in *Wesley Willows* had were those imposed on it by the statutes and regulations of the State of Illinois.

The Illinois Supreme Court in *Korzen* and in *Winnebago Home for the Aged* similarly denied exemption on the grounds that the homes for the aged in each of those cases had "stringent health requirements," although they, too, were governed by the regulations of the Illinois Department of Public Health and their health requirements were those imposed by the regulations of the Illinois Department of Public Health.

In the case at bar, the Illinois Supreme Court similarly alludes to the fact that the residents of the home must meet health requirements, even though the home in question must also be licensed by the State of Illinois and is subject to the regulations imposed by the Illinois Department of Health.

II.

THE ILLINOIS SUPREME COURT IS CONSTRUING THE TAX EXEMPTION PROVISIONS OF THE ILLINOIS STATUTE CONTRARY TO THE INTENT OF THE LEGISLATURE TO GRANT TAX RELIEF TO THE ELDERLY.

This intent is expressed in Chapter 120, § 500.23-1 of the Illinois Revised Statutes.

Said statute provides as follows:

> "A homestead exemption limited, except as hereinafter provided with relation to cooperatives, to a $1,500 maximum reduction from the value, as equalized or assessed

by the Department of Local Government Affairs, of real property that is occupied as a residence by a person 65 years of age or older who is liable for paying real estate taxes on the property and is an owner of record of the property or has a legal or equitable interest therein as evidenced by a written instrument, except for a leasehold interest, other than a leasehold interest of land on which a single family residence is located and is occupied as a residence by a person 65 years or older, and who has an ownership interest therein, legal, equitable or as a lessee and on which he is liable for the payment of real estate taxes. In the case of land improved with an apartment building owned and operated as a cooperative, the maximum reduction from the value of such real property, as equalized by the Department of Local Government Affairs, shall be limited to $1,500 multiplied by the number of apartments occupied by a person or persons 65 years of age or older who is liable, by contract with the owner or owners of record, for paying real estate taxes on the property and is an owner of record of a legal or equitable interest in the cooperative apartment building, other than a leasehold interest."

In *Wesley Willows* v. *Munson, supra,* the court said, at Page 252 of 251 N. E. 2d:

> "Argument that Wesley Willows is tax exempt, overlooks the fact that any group of old people could organize a not-for-profit corporation, build and operate a $2,000,000 apartment with high income requirements, founder's fees and monthly charges, secure tax exemption and eventually own a substantial asset. This logic runs contrary to the constitution, statutes, and the decisions of this court."

But, in 1971 the Illinois Legislature passed the Homestead Exemption Statute for people over 65 (Chap. 120, § 500.23-1 [*supra*]). In that statute, the Legislature grants tax exemption of $1,500.00 in value to a residence owned by a person over 65, and to a cooperative apartment building to the extent of $1,500.00 in value multiplied by the number of resident owners of the building. Thus, the very thing which the Supreme Court

in *Wesley Willows* was so afraid would happen, that is the obtaining of a tax exemption by a group of old people who would organize a not-for-profit corporation and build an apartment building, has not only been sanctioned by the Illinois Legislature, at least to the extent of $1,500.00 for each elderly person, but the Illinois Supreme Court, in *Doran* v. *Cullerton* (1972), 51 Ill. 2d 553, 283 N. E. 2d 865, has declared the statute constitutional for assessments made in 1972 and subsequent years.

Yet, in the instant case decided in 1975, the intent of the Legislature to grant tax relief to the elderly was not considered by the Illinois Supreme Court when it denied exemption to a not-for-profit old peoples home. There certainly was more reason for the Illinois Supreme Court to grant exemption to the old peoples home in the case at bar, which home is owned and operated by a charitable trust, which home was built with $993,149.00 of funds from charitable gifts, plus $560,000.00 in funds from commercial lenders, and under whose by-laws is open to "all worthy poor people or those of limited means who are not able to properly care for themselves," than there was for the same court in *Doran* v. *Cullerton (supra)* to declare that a statute, which grants tax exemption to a cooperative apartment building to the extent that it is owned by older people, was constitutional. In Illinois, elderly owners of a cooperative apartment building, regardless of their means, can obtain a homestead tax exemption, but an old peoples home, which is owned by a charitable trust and which was built largely through charitable gifts and which is intended for elderly poor people or those of limited means, has been denied tax exemption.

III.

FOR THIS COURT TO PROPERLY EXPLORE THE IMPACT OF THE CASE AT BAR ON THE PROBLEMS OF THE ELDERLY WHO ARE RESIDENTS OF OLD PEOPLES HOMES IN ILLINOIS, IT MUST CONSIDER CERTAIN STATISTICAL AND SOCIOLOGICAL INFORMATION WITH REGARD TO THE PROBLEMS OF THE ELDERLY IN GENERAL, AND WITH REGARD TO THE PROBLEMS OF THE ELDERLY IN ILLINOIS. IT MUST ALSO CONSIDER THE ROLE OF THE NOT-FOR-PROFIT HOME FOR THE AGED IN SOLVING THESE PROBLEMS.

A. First, What are These Problems?

1. *The basic problem:*

"Twentieth century advances in medicine and technology have sharply increased the numbers of people who live into old age, not only in the United States, but in most of the world. The increase in the proportion of older people coincides with a steadily diminishing role for them in modern society. Technical development and urbanization afford fewer opportunities for the older segment of society. Modern mobility and mass migration also contribute to the isolation, poverty, and lack of place of a great number of old people.

"These dual phenomena of modern times—the gift of longer life and the loss of a role in society for the older people—give rise to one of the most universal of social problems." *The White House Conference on International Cooperation, Report of the Committee on Social Welfare.* pp. 28-29, November 28-December 1, 1965.

2. *The problem in the United States and in Illinois:*

The average age of the population of the United States is increasing. *Older Americans,* U. S. Department of Health, Education and Welfare, Office of Human Development, Administration on Aging, June, 1973, furnishes the following statistics:

"In 1970, one in every 10 persons in the U.S. was 65+—20.1 million men and women.

"This number is about the same as the total population of the 22 smallest states.

"In this century, the *percentage* of the U.S. population aged 65+ more than doubled (from 4.1% in 1900 to 9.9% in 1970), while the number increased more than sixfold (from 3 million to 20 million).

"At present death rates, the older population is expected to increase 46% to 29 million by 2000. If the present very low birth rate continues, these 29 million will be 10.6% of the total population of 271.1 million. If the birth rate should increase very significantly, they would represent 8.9% of a total population of 322.3 million.

"In 1972, more than one-third of persons aged 65+ lived in the five most populous states—California, Illinois, New York, Pennsylvania, and Texas—each of which had more than one million."

Between 1960 and 1970, the nation's total older population increased faster than the under-65 population (21.1% vs. 12.5%). *National Geriatrics Society, Views and News,* 1973.

While the older population as a whole is growing more rapidly than the total population, the particularly rapid growth of the 75+ part should be noted. However, it must be remembered that the total impact of turnover is in the youngest part of the 65+ population—at the end of any five year period, more than a third of the older population (those aged 65-69) are persons who reached age 65 during those five years. *The Older Population: Some Facts We Should Know,* 1970, Administration on Aging.

The older population is not a homogenous group nor is it static. Every day approximately 4 thousand Americans celebrate their 65th birthday. Every day approximately 3 thousand persons aged 65+ die. The net increase is about a thousand a day or over 365,000 a year. *Developments in Aging: A report of the Special Committee on Aging,* United States Senate, 1974.

In Illinois, 1,134,000 people over 65 were estimated in July, 1974. (U. S. Census) This represented 10.2% of the entire population. It is likely that the population over 65 will reach two million by the year 2000. *Older American (supra).*

B. What Is the Role of the Not-For-Profit Home in Solving These Problems?

In meeting the need for special care for the relief of the aged—which is pressing at national, state, and local levels—many new federal and state legislative programs have been commenced or broadened since World War II. See, *Developments in Aging*, 1967, *A Report of the Special Committee on Aging*, United States Senate. However, at the local level, the non-profit homes for the aged have played the most vital role in meeting the unique and difficult challenge of defining and fulfilling the special needs of the aged:

> "Long before there was much public concern, and certainly before there was any thought of government responsibility, for the condition of the aging, our religious institutions were engaged in providing care and comfort for those in their later years. Much of our understanding in dealing with the problems of later years derives from the experience of our religious and philanthropic institutions which, until recent years, offered the major and often the best community resource for caring for the elderly.
>
> "Today what was once considered primarily a local family or individual problem has become one of community, state, and even national concern. One reason is that there are a lot more of us in life's later years. * * * In this broader context our church institutions, which have pioneered much of our facilities for the elderly, have an expanded role and an enlarged responsibility. It goes beyond the parochial concern for the church's own. It extends to the community as a whole, and in many ways, to the nation and its growing elderly population." *U. S. Housing & Home Finance Agency, Proceedings of the Interfaith Conference on Housing for Senior Citizens*, pp. 31-32, April 20-21, 1964.

It is respectfully submitted that this court must note probable jurisdiction to review the case at bar, and reverse the decision of the Illinois Supreme Court, so that the funds of the not-for-profit homes in Illinois will not be diluted in defending their tax exempt status, and so that the charitable gifts which have been contributed to the building of such homes can be used exclusively to further the vital role which these homes are engaged in in solving the problems of the aged.

CONCLUSION.

For the reasons stated, the Amicus Curiae joins with the appellants and respectfully requests that this court note probable jurisdiction and require briefs on the merits and oral argument.

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